

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C.

In the Matter of)	
)	
Broadcast Localism)	MB Docket No. 04-233
)	
To the Commission)	

REPLY BY SAM BROWN TO VARIOUS COMMENTS
Or
THE POKER-DOG PARADOX

Special Procedural Note: In searching for comments and replies, I was able to find some under 04-233 and 04-223. Some replies were documents of type “RC” and others “RL.” The commission and staff would be strongly urged to seek and consider all of these equally. Many people are not intimately familiar with FCC procedures and should not be denied their place in the democratic process for having made a clerical error.

The sheer number of comments in this proceeding is some indication of the level of public concern, and industry concern in the matter of broadcast localism. While certain blocks of comments can clearly be traced back to single sources, there are still many views expressed. In this reply, an effort is made to address several of the prevalent types of comments in this matter.

Industry Comments – Those in broadcasting seemed to have one of several major themes in their comments.

A number of comments came from owners or managers of small stations or groups which do present heavily community-involved local programming. If all stations were run like some of these examples, there would be no need for a broadcast localism proceeding. In our nation’s small towns and some mid-sized cities local radio and television are still strong. Such broadcasters could only benefit from properly designed policies, as they would already be in easy compliance with new rules, yet the out-of-town corporate giants could not just come to town with cheap mass-produced voicetracked non-local programming that would unfairly compete.

Other comments, usually in large well-orchestrated blocks, come from various offices of the giant multi-station group owners which have brought the industry’s commitment to local service to this crisis point that requires us to consider it now. As one might expect, they are doing their best to escape blame and excuse their actions. In most cases this done with “smoke and mirrors.” The mirrors point to the best individual stations in these vast groups – the ones that do truly serve their local areas. What they don’t tell you is that in many markets entire clusters including many of the major stations have no news department, few locally-hosted programmes outside of drivetimes, and primarily national playlists which strip even entertainment programming of any local flavour. The smoke hides lack of public service on stations that; boast of all the community leaders who have appeared on their airwaves, while sometimes failing to mention that it all happened on Sunday morning at about 06:00; quote vast monetary “values” associated with their PSA’s, which simply ran in unsold commercial slots and cost the stations nothing; or take credit for efforts that may have largely been undertaken with a minimum of air-time used, such as sending a celebrity DJ to charity fundraiser, or collecting donations at their sponsors’ locations while only occasionally mentioning these during breaks in otherwise-unresponsive programming.

Public Group Comments – Several mass-mailings of almost identical comments have come with several different themes. Each major theme is, at least, representative of one strain of public thought and should be considered. A series of comments comes from people demanding public hearings in their communities. It is not clear to me what group encouraged this particular approach. It is clear that they were able to get a substantial number of people to make the effort to send it and it is equally clear that it represents a wider dissatisfaction with the present state of broadcasting. Personally, I don’t see the utility of delaying action with a large-scale, expensive set of hearing that

will largely duplicate what you are learning from these comments, though the sentiment for the necessity of localism improvement should not be overlooked.

Many comments came from the listeners to a particular contemporary Christian translator network. From the wording it appears that the station encouraged people to make their support known. While it says very little that directly relates to localism, it should serve to point out that even small niche audiences are quite attached to their stations (or translators) of choice. What it shows is that **no existing station should be “bumped”** off the air by new rules or disparate priorities. This could be prevented in several ways:

- a. Additions to the allocation table would not be allowed if existing LPFM or translators would be removed from service.
- b. Rules for second or third adjacent spacing should be waived to save such “secondary” stations if changes are approved to full-power stations. The application for such waivers, and the frequency search and necessary engineering for changes in secondary stations should be the responsibility of the full-power station desiring the change. Secondary stations would not be subject to protection from second or third-adjacent interference in such situations and could suffer minor changes in their coverage or service area, with efforts made to minimise such impacts.
- c. The use of unusual directional antennas, or translators of secondary stations would be allowed to preserve them in the face of full-power changes.

Except –

- a. If the translator largely serves an audience that can also mostly receive the primary station, or
- b. If the translator largely serves an audience that can also mostly receive another translator of the station, or
- c. If the primary station or another translator can be modified to serve the area of a translator which is proposed to be deleted
- d. If the primary station has another co-owned or LMA’ed station or translator thereof which generally simulcasts it and serves the area that would lose service of a translator.
- e. If the “bumpee” willingly negotiates and accepts an agreement with the station seeking to expand or move.

In the cases of translators in cases “a” through “d” in this exception list, divestiture should be required to create new local LPFM-type stations.

Musicians groups had members comment on the difficulties caused by national playlists, and highly-restrictive formats. They are right. Only by facilitating more voices on the radio dial and requiring localism of those who already own many station will new artists have access to the airwaves, and thus to the public.

Many people filed more comments in favour of LPFM. The common threads are the local nature of the medium, and how much more benefit could be derived if more LPFM’s were authorised. People within range of LPFM’s also frequently commented on the valuable service they provide. It was also widely noted that a large batch of translator applications were accepted (and some granted) before all opportunities for LPFM filings had been exhausted – this clearly should not have happened.

Individual comments – These often represent the creative thoughts of concerned citizens and should be weighed very heavily in devising solutions.

Comments from people with engineering knowledge varied widely, but were almost all focused on methods of allowing more people to have access to the public airwaves. Several did point out that using the spacing rules for translators for LPFM’s would be an excellent first step. The flexibility it provides would allow many more communities to be served and could allow the conversion of some existing translators into new local stations. Many also focused on the use of additional spectrum for FM and of adding LPAM.

Several people brought up the idea of adding a very-low-power service that allow almost any private citizen to broadcast. One proposal from a ham radio operator was to do this in the microwave bands, though I would doubt the feasibility of any widespread public acceptance of such limited reception (receivers would be expensive and antennas would almost always need to be outdoors and line-of-sight to the station). Some have suggested allowing micropower FM or AM stations, and still others suggest other bits of spectrum for this purpose.

In any of these “extra band” proposals, the potential exists to vastly increase the opportunities for people to broadcast. On the FCC’s own website, it has been mentioned at times how the commission receives tens of thousands of requests per year for permission to broadcast in small areas. The history of such applications, existing LPFM’s, internet radio, and even illegal “pirate” stations shows that most people who want to start stations are not interested in competing with the mainstream formats, but rather in serving unserved audiences. For such a forum to succeed, coverage of the new band needs to be required in most new radios, just as FM-Stereo, UHF, and CB Channels 24-40 once were required. The precedent is clear and need is obvious. Whether the extra band proposals of myself or other commenters is ultimately adopted, it can only work if the public can receive the new stations without special effort.

Several people mentioned the problems with the present rules for TV station carriage on satellite and cable. Some aspects of this problem are beyond the FCC’s discretion, but the new SHVA will help. It is, however critical for the “significantly-viewed” rules to reflect actual viewing, and not the wishes of network affiliates who do not wish cross-town competition in the nations new larger CMA’s that have replaced the more compact cities and then MSA’s of the past. Only through competition will TV stations be given the strong free-market incentive to serve their coverage areas. Any artificial requirement that citizens are forced to watch the government-designated station for their locations will only reduce the need for public service and responsiveness by the stations – the whole former-Soviet economy is testimony to that!

Summary and paradox

The broadcast industry says “nothing is wrong” and “format diversity has increased,” but there is widespread public concern over the deteriorating local quality of broadcasting. People say they have fewer choices; the industry says they have more. The industry claims more public service than ever, yet the public doesn’t feel served. The public demands change and the industry asks that some aspect of the current system be proven wrong.

In a court of law there would be no way to prove that Leonardo da Vinci’s “Last Supper” is artistically superior to a \$10 flea-market painting on velvet of “Dogs Playing Poker.” You could assert that more effort was required for “Last Supper”, just as it is for true local programming, but that would prove nothing. A bevy of art critics could compare these two well-known works and unanimously conclude that “Supper” has merit exceeding that of “Poker Dogs,” but again those are just opinions. You could use your common sense, but that would be unscientific, so which is the better work-of-art?

In the end, subjective conclusions must be drawn on the basis of opinions. How many private citizens have taken the time to comment in this proceeding, or to write the FCC praising Clear Channel and Infinity for increasing the quality of radio in their communities by buying up most of the stations? How many have complained about the present state of broadcasting, or tried to put new voices on the air? How often have critics or radio hobbyists considered the industry to be improving? How often have they complained about where it is going? Among those in the broadcast field, have any supported the status quo other than those who are directly representing the giants who benefit from it?

As you read the comments of Clear Channel and NAB, telling us that radio and television are serving local communities better than ever before, just remember that the man at the flea market *selling* the “Poker Dogs” portraits may be the only one who opines in favour of its artistic superiority.

